held a note against Hughes, secured by a chattel mortgage on the automobile. Neither party knew that Hughes had stolen the automobile until after the defendant had surrendered the note and released the mortgage. After the automobile was returned to its true owner, the plaintiff sued to recover the money paid. *Held,* that the plaintiff could not recover. *Gaffner v. American Finance Co.* (1922, Wash.) 206 Pac. 916.

As between parties having equal equities, one of whom must suffer, the loss should lie where it has fallen. *Ex parte Richard & Thalheimer* (1913) 180 Ala. 580, 61 So. 819; *Atlantic Coast Line Ry. v. Schirmer* (1910) 87 S. C. 309, 69 S. E. 439; *Walker v. Conant* (1888) 69 Mich. 321, 37 N. W. 292; Woodward, *Quasi-Contracts* (1913) 39; Keener, *Quasi-Contracts* (1893) 66; Costigan, *Change of Position as a Defense* (1907) 20 HARV. L. REV. 205, 216; (1893) 7 *ibid.* 241; (1908) 8 COL. L. REV. 404.

SPECFIC PERFORMANCE—MUTUALITY—OIL LEASES.—In an action to obtain specific performance of an agreement to execute an oil lease, it appeared that the lease placed the plaintiffs under a duty to start drilling for oil on the premises within six months and to make certain small payments to the defendants. The plaintiffs were also given the power and privilege to surrender the lease at any time. *Held,* that the defendants could not be forced to execute the lease since it lacked mutuality. *Dabney v. Key* (1922, Calif. App.) 207 Pac. 921.

The above type of lease, frequently used in oil and mineral development, is usually held to lack mutuality and therefore not specifically enforceable. *Advance Oil Co. v. Hunt* (1917) 66 Ind. App. 228, 116 N. E. 340; *Watford Oil & Gas Co. v. Shipman* (1908) 233 Ill. 9, 84 N. E. 53; *contra, Guffey v. Smith* (1915) 237 U. S. 101, 35 Sup. Ct. 526, departing from *Rutland Marble Co. v. Ripley* (1869, U. S.) 10 Wall. 339; see COMMENTS (1917) 27 YALE LAW JOURNAL, 261; Ames, *Mutuality in Specific Performance* (1903) 3 COL. L. REV. 1.

TORTS—NEGLIGENCE—ATTRACTIVE NUISANCE.—The defendant had on his land a poisonous pool of water. Its appearance was similar to a swimming pool, the water being clear and appearing to be pure. Two children of the plaintiff, eight and eleven years old, came on the defendant's land, went into the pool, were poisoned and died. *Held,* (three judges *dissenting*) that, as the children were trespassers, the plaintiff could not recover, since the pool did not constitute an attractive nuisance. *United Zinc & Chemical Co. v. Britt* (1922, U. S.) 42 Sup. Ct. 299.

This case is in accord with the tendency of the federal courts to limit the doctrine of attractive nuisance to turn-tables and dangerous machinery only. *Erie R. R. v. Hilt* (1917) 247 U. S. 97, 38 Sup. Ct. 435; *Nat'l. Metal Edge Box Co. v. Agostini* (1919, C. C. A. 2d) 258 Fed. 109; see (1921) 19 MICH L. REV. 450. Some courts have extended the doctrine to other situations, but few have applied it to natural conditions, such as a pond or body of water. *Swartz v. Akron Waterworks Co.* (1907) 77 Ohio St. 235, 83 N. E. 66; *Thompson v. Ill. Cent. Ry.* (1913) 105 Miss. 636, 63 So. 185; *contra, Kansas City v. Siese* (1905) 71 Kan. 283, 80 Pac. 626. For variations in the extent of this doctrine, see (1922) 31 YALE LAW JOURNAL, 556; (1921) 31 *ibid.* 102; (1921) 30 *ibid.* 870.

TORTS—MALICIOUS PROSECUTION FOR ACTIONS NOT INVOLVING ARREST OR SEIZURE.—The defendant maliciously and without probable cause brought nine successive suits against the plaintiff, all of which terminated unsuccessfully. The defendant did not at any time cause the arrest of the plaintiff or seizure of his goods. The plaintiff brought an action for malicious prosecution. *Held,* that the plaintiff could recover. *Shedd v. Patterson* (1922, Ill.) 134 N. E. 705.

Some American courts adhere to the English rule that an action for malicious prosecution cannot be maintained in the absence of arrest of person or seizure